

**[4310-55]**

**Title 50—Wildlife and Fisheries**

**CHAPTER 1—U.S. FISH AND WILDLIFE  
SERVICE, DEPARTMENT OF THE IN-  
TERIOR**

**PART 17—ENDANGERED AND  
THREATENED WILDLIFE AND PLANTS**

**Listing of the New Mexican Ridge-  
Nosed Rattlesnake as a Threatened  
Species With Critical Habitat**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines the New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*) to be a threatened species. This action is being taken primarily because of the threats of overcollection on populations of this species and provides Federal protection for the species and its habitat. The New Mexican ridge-nosed rattlesnake is known only from the Animas Mountains in New Mexico and Chihuahua, Mexico.

**DATES:** This rule becomes effective on August 21, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

**SUPPLEMENTARY INFORMATION:**

#### BACKGROUND

On May 26, 1977, the Service published a proposed rulemaking in the *FEDERAL REGISTER* (42 FR 27007-27009) advising that sufficient evidence was on file to support a determination that the New Mexican ridge-nosed rattlesnake is an endangered species pursuant to the endangered Species Act of 1973, 16 U.S.C. 1531 et seq. That proposal summarized the factors thought to be contributing to the likelihood that this snake could become extinct within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Section 4(b)(1)(A) of the Act requires that the Governor of each State or Territory, within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a threatened species or an endangered species. A letter was sent to Governor Apodaca of the State of New Mexico on June 3, 1977, notifying him of the proposed rulemaking for the New Mexican ridge-nosed rattlesnake. Letters were sent to interested parties on June 10, 1977, notifying them of the proposal and soliciting their comments and suggestions.

#### SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the *FEDERAL REGISTER* prior to adding any species to the list of endangered and threatened wildlife and plants.

In the May 26, 1977, *FEDERAL REGISTER* proposed rulemaking (42 FR 27007-27009) and associated June 1,

1977, Regional Press Release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All public comments received during the period May 26, 1977, to February 9, 1978, were considered.

Comments were received from 11 individuals and representatives of various organizations, and official comments were received from Mr. William S. Huey, Director of the New Mexico Department of Game and Fish. Of those who responded, 10 individuals supported the proposed rulemaking in all or part, one opposed the rulemaking, while the State appeared to have mixed feelings concerning the status of the species.

William Degenhardt (University of New Mexico) commented on his past experience with this rattlesnake which included work done for the Service on a contract to study this species. Dr. Degenhardt felt that endangered status is necessary because of population decline associated with collecting. He commented on access to the rattlesnake habitat and notes that reptile dealers regularly offer State protected species for sale. He also states that critical habitat should be increased instead of decreased. In summary, he recommends: (1) *Crotalus willardi obscurus* be given endangered status; (2) the area protection against trespass be continued at least as it is now with an attempt to procure the total Animas range as a refuge of about the same size as was previously contained within Coronado National Forest ( $\pm 87$  sections); and (3) continued study and monitoring of the population.

Herbert S. Harris (Natural History Society of Maryland) supplied comments on both the proposal and the proposed environmental impact assessment. Dr. Harris believes the species is still endangered although it may occur in additional canyons. Although this species is primarily found in pine-oak woodland, it is not absolutely restricted to this vegetation type. Dr. Harris also feels that the State's comments on the abundance of this species were misleading. Finally, he agrees with Mr. Huey of the State that critical habitat should be restricted to areas between 6,200 and 8,532 feet in Indian, Bear, and Spring Creek Canyons.

The following individuals supported the proposed listing but added no new data to the proposal: John R. Hill, Jr. (Army Corps of Engineers), Michael A. Williamson (Rio Grande Zoological Park), Letitia C. Peirce (New Mexico Herpetological Society), F. Wayne King (New York Zoological Society), George L. Turcott (Bureau of Land Management), William A. Butler (Environmental Defense Fund), and Steven Baigel (Albuquerque, New

Mexico). Some of these individuals did restate the reasons for listing as the basis for their support and comments.

Michael Solan (Acting State Director, Bureau of Land Management, New Mexico) briefly cited additional locality information from the New Mexico Department of Game and Fish and states that the informal management agreement between the Fish and Wildlife Service and the owner of the areas where the rattlesnake lives has resulted in stabilizing the population. Mr. Solan believes that a threatened status would adequately protect this species.

Mr. William Huey responded for the State of New Mexico. Mr. Huey noted that the State protects the species as endangered and reviewed the penalties for violation of State law as well as the reasons the State had for protecting the species. Mr. Huey also noted that the State had recently conducted a survey of the Animas Mountains and provided a copy of the report on its findings. New Mexico biologists did not have any trouble locating the New Mexican ridge-nosed rattlesnake. In addition, he noted additional locality records and mentioned that Pine Canyon may have a population. This species is now known from Indian, Bear, and Spring Canyons.

Mr. Huey noted that this rattlesnake is not necessarily restricted to pine-oak vegetation and that its range is probably over several hundred acres in various vegetation types. Threats to the species are real enough, including fire although the fires are seldom large. No grazing, lumbering, clearing, or recreational activity presently occurs in the range of the species, according to Mr. Huey. The Victorio Land and Cattle Co.'s efforts on behalf of the species were noted; he doubted any further protection could be afforded. Mr. Huey also commented extensively on the adequacy of existing regulatory mechanisms.

Mr. Huey recommended a threatened status instead of endangered and modification of the proposed critical habitat to include only areas between 6,200 feet and 8,532 feet in the three canyons of known occurrence. Finally, Mr. Huey recommended contacting landowners prior to proposing critical habitat on their lands to avoid misgivings which might arise.

Arthur A. Smith responded for Peter G. Wray (The Victorio Co. Phoenix, Ariz.). Mr. Smith pointed out the Victorio Co.'s past and present programs and interest in the conservation of the New Mexican ridge-nosed rattlesnake. Such programs include strict control of access to the rattlesnake canyons and limiting its own development and structural improvements within the habitat. While overcollection has been a problem in the past, extreme habitat

destruction has not occurred to the extent that it would be detrimental to the snake. Mr. Smith briefly reviewed the State's collecting laws and the application of section 7 of the Endangered Species Act of 1973 to operations on the ranch. Mr. Smith states that the Victorio Co. cannot support a listing as endangered; he recommends rewriting the proposal to be more accurate, in his opinion, in listing the factors affecting the species. He recommends critical habitat be considered not only on specimen sightings but also on the status of land ownership. Finally, Mr. Smith called for a more factual delineation of factors affecting the species and the development of a plan of protection for the rattlesnake.

#### CONCLUSION

There is a legitimate question as to whether this species is endangered, in light of current private and State protective measures. Because the plight of this unique rattlesnake has been recognized by the State and the landowners have made a vigorous attempt to discourage collectors and associated habitat destruction, the Service now feels that this species is no longer in danger of becoming extinct so as to be endangered as defined by the Act. However, the high price commanded by the New Mexican ridge-nosed rattlesnake still makes it a very desirable animal, and attempts to secure specimens can probably be expected in spite of strict control. As such, the status of this snake probably is more in tune with the definition of threatened under the Act—a species likely to become endangered in the foreseeable future. Therefore, the Service determines that this species should be listed as threatened. Also, as a result of information received from region 2 of the Service, the State of New Mexico, and the Victorio Co., the following changes should be made in those criteria leading to this determination:

1. The present or threatened destruction, modification, or curtailment of its habitat or range.—In this section of the proposal, reference was made to the rattlesnake's occurrence in two canyons in the Animas Mountains. It is now known to be present in three canyons. Also, there was a reference to increased usage of the Animas Mountains for recreational activity as if this increased use was already occurring. The word "potential" should be inserted to correct this impression. Therefore, the criteria for section (1) should read in full: The range of the New Mexican ridge-nosed rattlesnake is primarily restricted to three canyons in the Animas Mountains of New Mexico and may involve habitat of approximately one square mile or less. A small

population also exists in the Sierra de San Luis, Chihuahua, Mexico. The Playas Valley is experiencing development in the form of a copper ore reduction plant and associated "company town." Evidence indicates that the plant itself will not adversely affect the rattlesnake; however, the potential of increased usage of the Animas Mountains for recreational purposes could severely reduce available habitat and thus be detrimental to the populations of the New Mexican ridge-nosed rattlesnake.

2. Overutilization for commercial, sporting, scientific, or educational purposes.—While the reasons presented in this section of the proposal are still the main reasons for the plight of this species, the State of New Mexico pointed out that there is little to indicate that dynamiting has been significant to habitat destruction in the Animas Mountains. Therefore, the reference to this practice should be deleted. As such, the discussion of section (2) should read: This is probably the chief danger to the New Mexican ridge-nosed rattlesnake both in the United States and Mexico. Although relatively abundant when first discovered in 1961, the attractiveness of this species, coupled with its limited geographic range, has made it a very desirable animal for scientific and commercial purposes. Dealers in live herpetological specimens have priced this species as high as \$175 or more for an 18-inch specimen. The value of this animal has led to severe habitat destruction in the process of collecting. Evidence indicates that the New Mexican ridge-nosed rattlesnake is now rare.

4. The inadequacy of existing regulatory mechanisms.—Changes in this criterion are the major reasons the Director has determined that this species should be threatened and not endangered. Both the State of New Mexico and the Victorio Co. have outlined their combined protection measures for the New Mexican ridge-nosed rattlesnake. Therefore, section (4) should now read "not applicable".

Finally, criteria under sections (3) and (5) merit no change from the proposal and remain unchanged.

Therefore, after a thorough review and consideration of all the information available, the Director has determined that the New Mexican ridge-nosed rattlesnake is likely to become endangered throughout all or a significant portion of its range and is determined to be a threatened species under provisions of the Act.

#### CRITICAL HABITAT

Section 7 of the Act, entitled "Interagency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such

programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "critical habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the *FEDERAL REGISTER* of January 4, 1978 (43 FR 870-876) and is reprinted below:

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978, *FEDERAL REGISTER* (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing of offspring; and generally;
- (5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

With respect to the New Mexican ridge-nosed rattlesnake, the areas determined as critical habitat satisfy all known criteria for the evolutionary, ecological, behavioral, and physiological requirements of the species. Dens are available which provide winter and summer retreats. Vegetation provides cover, and lizards and rodents are abundant in the area and provide an adequate source of food items. The

three canyons determined to be critical habitat include the entire range in the United States where this subspecies is known to occur. Loss of this habitat or its constituent elements would appreciably increase the likelihood of the survival or recovery of the New Mexican ridge-nosed rattlesnake.

The Director has considered all comments and data submitted in response to the proposed determination of critical habitat for the New Mexican ridge-nosed rattlesnake (42 FR 27007-27009).

Based on this review, the critical habitat for the New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*) is determined to include the following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species):

(1) New Mexico. Hidalgo County. An area between 6,200 feet and 8,532 feet in Bear, Indian, and Spring Canyons, Animas Mountains.

This is a revised critical habitat from the proposed critical habitat of "Elevations above 6,200 feet in the Animas Mountains, Hidalgo County, N. Mex." and is based on updated information the Service received from the New Mexico Department of Game and Fish.

There may be many kinds of actions which can be carried out within the critical habitat of a species which would not be expected to adversely affect that species.

This point has not been well understood by some persons. There has been widespread and erroneous belief that a critical habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a critical habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to section 7 of the Act are applicable in a certain area.

A critical habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to in-

volve other motives; for example, to enlarge a critical habitat delineation so as to cover additional habitat under section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of critical habitat delineations. Such questions should, and can more conveniently, be dealt with after critical habitat has been designated.

#### EFFECT OF THE RULEMAKING

Section 7 of the Act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification or habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Provisions for Interagency Cooperation were published on January 4, 1978, in the FEDERAL REGISTER (43 FR 870-876) to assist Federal agencies in complying with section 7.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all threatened species. The regulations referred to above, which pertain to threatened species, are found at Section 17.31 of Title 50 and are summarized below.

These prohibitions make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was ille-

gally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in 50 CFR Part 17, provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving threatened species are available for scientific purposes, educational purposes, to enhance the propagation or survival of the species or for special purposes not inconsistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

#### EFFECT INTERNATIONALLY

In addition to the protection provided by the Act, the Service will review the New Mexican ridge-nosed rattlesnake to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix(ices) to that Convention or whether it should be considered under other, appropriate international agreements.

#### NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the New Mexican ridge-nosed rattlesnake. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, 202-343-7814.

#### REGULATIONS PROMULGATION

Accordingly, §17.11 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the New Mexican ridge-nosed rattlesnake to the list, alphabetically, under "Reptiles" as indicated below:

§17.11 Endangered and threatened wildlife.

Species		Range					Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion endangered					
Reptiles:									
Rattlesnake, New Mexican ridge-nosed.	<i>Crotalus willardi obscurus</i> .....	NA	U.S.A. (New Mexico).	(New Mexico); Entire .....			T		

2. The Service amends § 17.95(c) by adding Critical Habitat of the New Mexican ridge-nosed rattlesnake after that of the Mona boa as follows:

§ 17.95 [Amended].

(c) Reptiles.

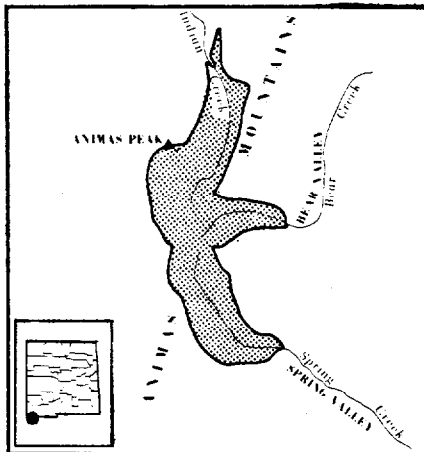
NEW MEXICAN RIDGE-NOSED  
RATTLESNAKE

(*Crotalus willardi obscurus*)

New Mexico. Hidalgo County. Elevations between 6,200 feet and 8,532 feet in Bear, Indian, and Spring Canyons, Animas Mountains.

NEW MEXICAN RIDGE-NOSED RATTLESNAKE

Hidalgo County, NEW MEXICO



NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 12, 1978.

LYNN A. GREENWALT,  
Director, Fish and Wildlife Service.  
[FR Doc. 78-19895 Filed 7-18-78; 8:45 am]